

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

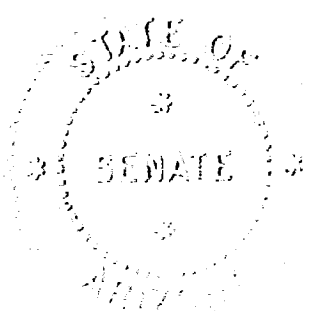
CHAPTER 190

HOUSE BILL 2351

AN ACT

AMENDING SECTIONS 41-2503, 41-2534, 41-2535, 41-2556, 41-2559, 41-2632 AND 41-2701, ARIZONA REVISED STATUTES; RELATING TO THE STATE PROCUREMENT CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)



Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-2503, Arizona Revised Statutes, is amended to read:

41-2503. Definitions

In this chapter, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.

2. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.

3. "Change order" means a written order which is signed by a procurement officer and which directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.

4. "Construction":

(a) Means the process of building, altering, repairing, improving or demolishing any public structure or building, or other public improvements of any kind to any public real property.

(b) Does not include:

(i) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.

(ii) THE INVESTIGATION, CHARACTERIZATION, RESTORATION OR REMEDIATION DUE TO AN ENVIRONMENTAL ISSUE OF EXISTING FACILITIES, STRUCTURES, BUILDINGS OR REAL PROPERTY.

5. "Construction-manager-at-risk" means a project delivery method in which:

(a) There is a separate contract for design services and a separate contract for construction services.

(b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.

(c) Design and construction of the project may be in sequential phases or concurrent phases.

(d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.

6. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

(a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.

(b) A combination of construction and, as elected by the purchasing agency, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of

1 construction-manager-at-risk, design-build or job-order-contracting in this
2 section.

3 7. "Contract" means all types of state agreements, regardless of what
4 they may be called, for the procurement of materials, services or
5 construction or the disposal of materials.

6 8. "Contract modification" means any written alteration in the terms
7 and conditions of any contract accomplished by mutual action of the parties
8 to the contract.

9 9. "Contractor" means any person who has a contract with a state
10 governmental unit.

11 10. "Data" means documented information, regardless of form or
12 characteristic.

13 11. "Department" means the department of administration.

14 12. "Design-bid-build" means a project delivery method in which:

15 (a) There is a sequential award of two separate contracts.

16 (b) The first contract is for design services.

17 (c) The second contract is for construction.

18 (d) Design and construction of the project are in sequential phases.

19 (e) Finance services, maintenance services and operations services are
20 not included.

21 13. "Design-build" means a project delivery method in which:

22 (a) There is a single contract for design services and construction
23 services.

24 (b) Design and construction of the project may be in sequential phases
25 or concurrent phases.

26 (c) Finance services, maintenance services, operations services,
27 preconstruction services and other related services may be included.

28 14. "Design requirements":

29 (a) Means at a minimum the purchasing agency's written description of
30 the project or service to be procured, including:

31 (i) The required features, functions, characteristics, qualities and
32 properties.

33 (ii) The anticipated schedule, including start, duration and
34 completion.

35 (iii) The estimated budgets applicable to the specific procurement for
36 design and construction and, if applicable, for operation and maintenance.

37 (b) May include:

38 (i) Drawings and other documents illustrating the scale and
39 relationship of the features, functions and characteristics of the project,
40 which shall all be prepared by an architect or engineer, as appropriate, who
41 is registered pursuant to section 32-121.

42 (ii) Additional design information or documents that the purchasing
43 agency elects to include.

44 15. "Design services" means architect services, engineer services or
45 landscape architect services.

- 1 16. "Designee" means a duly authorized representative of the director.
2 17. "Director" means the director of the department of administration.
3 18. "Employee" means an individual drawing a salary from a state
4 governmental unit, whether elected or not, and any noncompensated individual
5 performing personal services for any state governmental unit.
6 19. "Engineer services" means those professional engineer services that
7 are within the scope of engineering practice as provided in title 32, chapter
8 1.
9 20. "Finance services" means financing for a construction services
10 project.
11 21. "General services administration contract" means contracts awarded
12 by the United States government general services administration.
13 22. "Grant" means the furnishing of financial or other assistance,
14 including state funds or federal grant funds, by any state governmental unit
15 to any person for the purpose of supporting or stimulating educational,
16 cultural, social or economic quality of life. ~~if there is no substantiated~~
17 ~~involvement between the state governmental unit and the recipient during~~
18 ~~performance. Grant does not include an agreement whose primary purpose is~~
19 ~~to procure a specific end product in the form of materials, services or~~
20 ~~construction. A contract resulting from such an agreement is not a grant but~~
21 ~~a procurement contract.~~
22 23. "Job-order-contracting" means a project delivery method in which:
23 (a) The contract is a requirements contract for indefinite quantities
24 of construction.
25 (b) The construction to be performed is specified in job orders issued
26 during the contract.
27 (c) Finance services, maintenance services, operations services,
28 preconstruction services, design services and other related services may be
29 included.
30 24. "Landscape architect services" means those professional landscape
31 architect services that are within the scope of landscape architectural
32 practice as provided in title 32, chapter 1.
33 25. "Maintenance services" means routine maintenance, repair and
34 replacement of existing facilities, structures, buildings or real property.
35 26. "Materials":
36 (a) Means all property, including equipment, supplies, printing,
37 insurance and leases of property.
38 (b) Does not include land, a permanent interest in land or real
39 property or leasing space.
40 27. "Operations services" means routine operation of existing
41 facilities, structures, buildings or real property.
42 28. "Owner" means a state purchasing agency or state governmental unit.
43 29. "Person" means any corporation, business, individual, union,
44 committee, club, other organization or group of individuals.
45 30. "Preconstruction services" means advice during the design phase.

1 31. "Procurement":

2 (a) Means buying, purchasing, renting, leasing or otherwise acquiring
3 any materials, services, construction or construction services.

4 (b) Includes all functions that pertain to obtaining any material,
5 services, construction or construction services, including description of
6 requirements, selection and solicitation of sources, preparation and award
7 of contract, and all phases of contract administration.

8 32. "Procurement officer":

9 (a) Means any person duly authorized to enter into and administer
10 contracts and make written determinations with respect to the contracts.

11 (b) Includes an authorized representative acting within the limits of
12 the authorized representative's authority.

13 33. "Purchasing agency" means any state governmental unit which is
14 authorized by this chapter or rules adopted pursuant to this chapter, or by
15 way of delegation from the director, to enter into contracts.

16 34. "Services":

17 (a) Means the furnishing of labor, time or effort by a contractor or
18 subcontractor which does not involve the delivery of a specific end product
19 other than required reports and performance.

20 (b) Does not include employment agreements or collective bargaining
21 agreements.

22 35. "State governmental unit" means any department, commission,
23 council, board, bureau, committee, institution, agency, government
24 corporation or other establishment or official of the executive branch or
25 corporation commission of this state.

26 36. "Subcontractor" means a person who contracts to perform work or
27 render service to a contractor or to another subcontractor as a part of a
28 contract with a state governmental unit.

29 37. "Using agency" means any state governmental unit which utilizes any
30 materials, services or construction procured under this chapter.

31 Sec. 2. Section 41-2534, Arizona Revised Statutes, is amended to read:
32 41-2534. Competitive sealed proposals

33 A. If, under rules adopted pursuant to this chapter, the director
34 determines in writing that the use of competitive sealed bidding is either
35 not practicable or not advantageous to this state, a contract for materials
36 or services may be entered into by competitive sealed proposals. This
37 section does not apply to procurement of construction, or construction
38 services OR SPECIFIED PROFESSIONAL SERVICES PURSUANT TO SECTION 41-2578,
39 SUBSECTION A. Construction services shall be procured pursuant to section
40 41-2537 or 41-2578. The director may provide by rule that it is either not
41 practicable or not advantageous to this state to procure specified types of
42 materials or services by competitive sealed bidding.

43 B. Proposals shall be solicited through a request for proposals.

44 C. Adequate public notice of the request for proposals shall be given
45 in the same manner as provided in section 41-2533.

1 D. Proposals shall be opened publicly at the time and place designated
2 in the request for proposals. The name of each offeror and such other
3 relevant information as is specified by rule shall be publicly read and
4 recorded in accordance with rules adopted by the director. All other
5 information contained in the proposals shall be confidential so as to avoid
6 disclosure of contents prejudicial to competing offerors during the process
7 of negotiation. The proposals shall be open for public inspection after
8 contract award. To the extent the offeror designates and the state concurs,
9 trade secrets or other proprietary data contained in the bid OFFER documents
10 shall remain confidential in accordance with rules adopted by the director.

11 E. The request for proposals shall state the relative importance of
12 price and other evaluation factors. Specific numerical weighting is not
13 required.

14 F. As provided in the request for proposals, and under rules adopted
15 by the director, discussions may be conducted with responsible offerors who
16 submit proposals determined to be reasonably susceptible to being selected
17 for award for the purpose of clarification to assure full understanding
18 of, ~~and responsiveness to,~~ the solicitation requirements AND TO PERMIT
19 REVISION OF OFFERS. Offerors shall be accorded fair treatment with respect
20 to any opportunity for discussion and ~~revision of proposals, and such~~
21 ~~revisions.~~ REVISIONS may be permitted after submissions SUBMISSION and
22 before award for ~~the purpose of obtaining best and final offers.~~ IF
23 DISCUSSIONS ARE CONDUCTED, ALL OFFERORS WHO HAVE SUBMITTED PROPOSALS THAT ARE
24 DETERMINED BY THE PROCUREMENT OFFICER TO BE IN THE COMPETITIVE RANGE SHALL
25 BE INVITED TO SUBMIT A FINAL PROPOSAL REVISION. In conducting discussions,
26 there shall be no disclosure of any information derived from proposals
27 submitted by competing offerors.

28 G. The award shall be made to the responsible offeror whose proposal
29 is determined in writing to be the most advantageous to this state taking
30 into consideration the evaluation factors set forth in the request for
31 proposals. No other factors or criteria may be used in the evaluation. The
32 amount of any applicable transaction privilege or use tax of a political
33 subdivision of this state is not a factor in determining the most
34 advantageous proposal. The contract file shall contain the basis on which
35 the award is made.

36 Sec. 3. Section 41-2535, Arizona Revised Statutes, is amended to read:

37 41-2535. Procurements not exceeding a prescribed amount; small
38 businesses; exception for construction services
39 contracts; simplified construction procurement
40 program

41 A. Any procurement which does not exceed the aggregate dollar amount
42 of ~~thirty-five~~ FIFTY thousand dollars may be made in accordance with rules
43 adopted by the director, except that the procurements shall be made with such
44 competition as is practicable under the circumstances.

1 B. Any procurement which does not exceed the aggregate dollar amount
2 of less than ~~twenty-five~~ FIFTY thousand dollars shall be restricted, if
3 practicable, to small businesses as defined in rules adopted by the director.
4 The procurement officer shall rotate the small business solicited to compete
5 for any procurement of less than ~~twenty-five~~ FIFTY thousand dollars. If it
6 is impracticable to restrict a particular procurement to small businesses,
7 the procurement officer shall make a determination setting forth the reasons
8 and place it in the contract file.

9 C. Procurement requirements shall not be artificially divided or
10 fragmented so as to constitute a purchase under this section and to
11 circumvent the source selection procedures required by section 41-2533 or
12 41-2534 or be artificially combined to circumvent this section.

13 D. A procurement involving construction not exceeding one hundred
14 thousand dollars may be made pursuant to rules adopted by the director in
15 accordance with this section which shall be known as the simplified
16 construction procurement program. At a minimum the rules shall require that:

17 1. A list be maintained of persons who desire to receive solicitations
18 to bid on construction projects to which additions shall be permitted
19 throughout the year.

20 2. The list of persons be available for public inspection.

21 3. Agreements for construction be on forms approved by the director.

22 ~~4. A performance bond and a payment bond as required by section~~
23 ~~41-2574 be provided for contracts for construction by contractors.~~

24 ~~5.~~ 4. All information submitted by bidders pursuant to this section
25 be confidential according to section 41-2533, subsection D.

26 ~~6.~~ 5. All bids for construction be opened at a public opening.

27 ~~7.~~ 6. All persons desiring to submit bids be treated equitably and
28 the information related to each project be available to all eligible persons.

29 ~~8.~~ 7. Competition for construction projects under the simplified
30 construction procurement program be encouraged to the maximum extent
31 possible.

32 Sec. 4. Section 41-2556, Arizona Revised Statutes, is amended to read:

33 41-2556. Demonstration projects

34 A. A demonstration project may be undertaken if the director
35 determines in writing that the project is innovative and unique. This state
36 shall not be obligated to pay the contractor, or to procure or lease the
37 services or materials supplied by the contractor. HOWEVER, ON THE WRITTEN
38 REQUEST AND JUSTIFICATION BY THE AGENCY AND WRITTEN DETERMINATION BY THE
39 DIRECTOR THAT IT IS IN THE BEST INTEREST OF THIS STATE, THIS STATE MAY PAY
40 THE CONTRACTOR FOR THE DEMONSTRATION PROJECT. The contract term shall not
41 exceed two years. A REQUEST AND written determination of the basis for the
42 contract award shall be included in the contract file.

43 B. A contract to procure or lease services or materials previously
44 supplied during a demonstration project shall be conducted under the
45 provisions of this article.

1 C. Except as otherwise provided by law, a contractor for a
2 demonstration project shall not be precluded from participating as a bidder
3 or offeror in a procurement for the services or materials supplied during a
4 demonstration project.

5 Sec. 5. Section 41-2559, Arizona Revised Statutes, is amended to read:

6 41-2559. Public-private partnership contracts

7 A. ~~A purchasing agency~~ THE DIRECTOR may enter into public-private
8 partnership contracts to finance the technology needs of the purchasing
9 agency. The funding for services under a public-private partnership contract
10 entered into pursuant to this section shall be contingent on and computed
11 according to established performance standards and shall be attributable to
12 the successful implementation of the technology program for the period
13 specified in the contract. ~~A purchasing agency~~ THE DIRECTOR may issue
14 requests for information and requests for proposals to solicit private
15 partners that are interested in providing programs under a contract entered
16 into pursuant to this section.

17 B. Each request for proposals issued pursuant to this section shall
18 require each private partner to propose specific performance improvements and
19 measurement approaches to be used to measure the value delivered by the
20 vendor technology solution. The ~~purchasing agency~~ DIRECTOR shall include an
21 assessment of the proposed value of the vendor technology solution in its
22 evaluation criteria to select the best value solution for the purchasing
23 agency.

24 C. A contract entered into between ~~a purchasing agency~~ THE DIRECTOR
25 and an automated systems vendor shall provide for payment of fees on a
26 contractually specific amount based on the achievement of measured
27 performance improvements that are mutually agreed to by the contractor and
28 the ~~purchasing agency~~ DIRECTOR and monies for payment of these fees are not
29 subject to legislative appropriation. The following are subject to review
30 and approval by the ~~head of the purchasing agency~~ DIRECTOR:

31 1. The terms of contracts entered into pursuant to this section
32 relating to the measurement of the performance improvement attributable to
33 the vendor technology program.

34 2. Payment of fees based on the achievement of the established
35 performance measures.

36 D. Before a public-private partnership contract is awarded pursuant
37 to this section, the joint legislative budget committee staff shall be
38 consulted with regard to the potential fiscal impact of the contract to the
39 state. If the joint legislative budget committee staff finds a significant
40 negative fiscal impact to the state, the staff shall report its findings to
41 the joint legislative budget committee.

42 Sec. 6. Section 41-2632, Arizona Revised Statutes, is amended to read:

43 41-2632. Cooperative purchasing authorized

44 A. Any public procurement unit may either participate in, sponsor,
45 conduct or administer a cooperative purchasing agreement for the procurement

1 of any materials, services or construction with one or more public
2 procurement units in accordance with an agreement entered into between the
3 participants. A nonprofit educational or public health institution may enter
4 into an agreement pursuant to this section if one or more of the parties
5 involved is a public procurement unit. An agreement entered into as provided
6 in this article is exempt from section 11-952, subsections D and F. Parties
7 under a cooperative purchasing agreement may:

8 1. Sponsor, conduct or administer a cooperative agreement for the
9 procurement or disposal of any materials, services or construction.

10 2. Cooperatively use materials or services.

11 3. Commonly use or share warehousing facilities, capital equipment and
12 other facilities.

13 4. Provide personnel, except that the requesting public procurement
14 unit shall pay the public procurement unit providing the personnel the direct
15 and indirect cost of providing the personnel, in accordance with the
16 agreement.

17 5. On request, make available to other public procurement units
18 informational, technical or other services OR SOFTWARE that may assist in
19 improving the efficiency or economy of procurement. The public procurement
20 unit furnishing the informational, or technical OR OTHER services OR SOFTWARE
21 has the right to request reimbursement for the reasonable and necessary costs
22 of providing such THESE services OR SOFTWARE.

23 B. The school facilities board or school districts, or both, may enter
24 into an agreement with a public procurement unit pursuant to this section for
25 the purpose of procuring materials and services needed to correct
26 deficiencies in school facilities as determined in section 15-2021.

27 C. The activities described in this section do not limit what parties
28 may do under a cooperative purchasing agreement.

29 Sec. 7. Section 41-2701, Arizona Revised Statutes, is amended to read:
30 41-2701. Definitions

31 In this chapter, unless the context otherwise requires:

32 1. "Grant" means the furnishing of financial or other assistance,
33 including state funds or federal grant funds, by any state governmental unit
34 to any person for the purpose of supporting or stimulating educational,
35 cultural, social or economic quality of life. ~~Grant does not include an~~
36 ~~agreement whose primary purpose is to procure a specific end product in the~~
37 ~~form of materials, services or construction. A contract resulting from such~~
38 ~~an agreement is not a grant but a procurement contract.~~

39 2. "Person" means any corporation, business, individual, committee,
40 club or other organization or group of individuals.

41 3. "State governmental unit" means any department, commission,
42 council, board, bureau, committee, institution, agency, government
43 corporation or other establishment or official of the executive branch or
44 corporation commission of this state.

APPROVED BY THE GOVERNOR MAY 4, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2004.

Passed the House March 1, 2004,

Passed the Senate April 8, 2004,

by the following vote: 58 Ayes,

by the following vote: 28 Ayes,

2 Nays, 0 Not Voting

0 Nays, 2 Not Voting

Jake Flake
Speaker of the House

Ken Bennett
President of the Senate

Norman L. Moore
Chief Clerk of the House

Charmine Bellington
Secretary of the Senate

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR~~

~~This Bill was received by the Governor this~~

~~_____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary to the Governor~~

~~Approved this _____ day of~~

~~_____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Governor of Arizona~~

~~EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE~~

~~This Bill was received by the Secretary of State~~

~~this _____ day of _____, 20____,~~

~~at _____ o'clock _____ M.~~

~~_____
Secretary of State~~

H.B. 2351

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 28, 2004,

by the following vote: 50 Ayes,

2 Nays, 8 Not Voting

Jake Flake
Speaker of the House

Norman L. Spoon
Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28th day of April, 2004

at 12:58 o'clock P. M.

Jennifer Ibarra
Secretary to the Governor

Approved this 4 day of

May, 20 05,

at 12⁰⁵ o'clock P. M.

J. N. ...
Governor of Arizona

H.B. 2351

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 4 day of May, 2004,

at 1:38 o'clock P. M.

Janice L. Brown
Secretary of State